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SUPREME COURT, U. S.

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Supreme Court of the United States

October Term, 1974

No. 74-5207

RALPH LEE, MABE,
Petitioner,
v.
CLINCHFIELD COAL COMPANY,
Respondent.

CHARLES H. SUTHERLAND,
Petitioner,
v.
CLINCHFIELD COAL COMPANY,
Respondent.

JAMES E. DYE,
Petitioner,
v.
JEWELL RIDGE COAL CORPORATION,
Respondent.

CLOWNIE T. MEADOWS,
Petitioner,
v.
CLINCHFIELD COAL COMPANY,
Respondent.

CLYDE RUEL DYE,
Petitioner,
v.
JEWELL RIDGE COAL CORPORATION,
Respondent.

HAZELTON McREYNOLDS,
Petitioner,
v.
CLINCHFIELD COAL COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION

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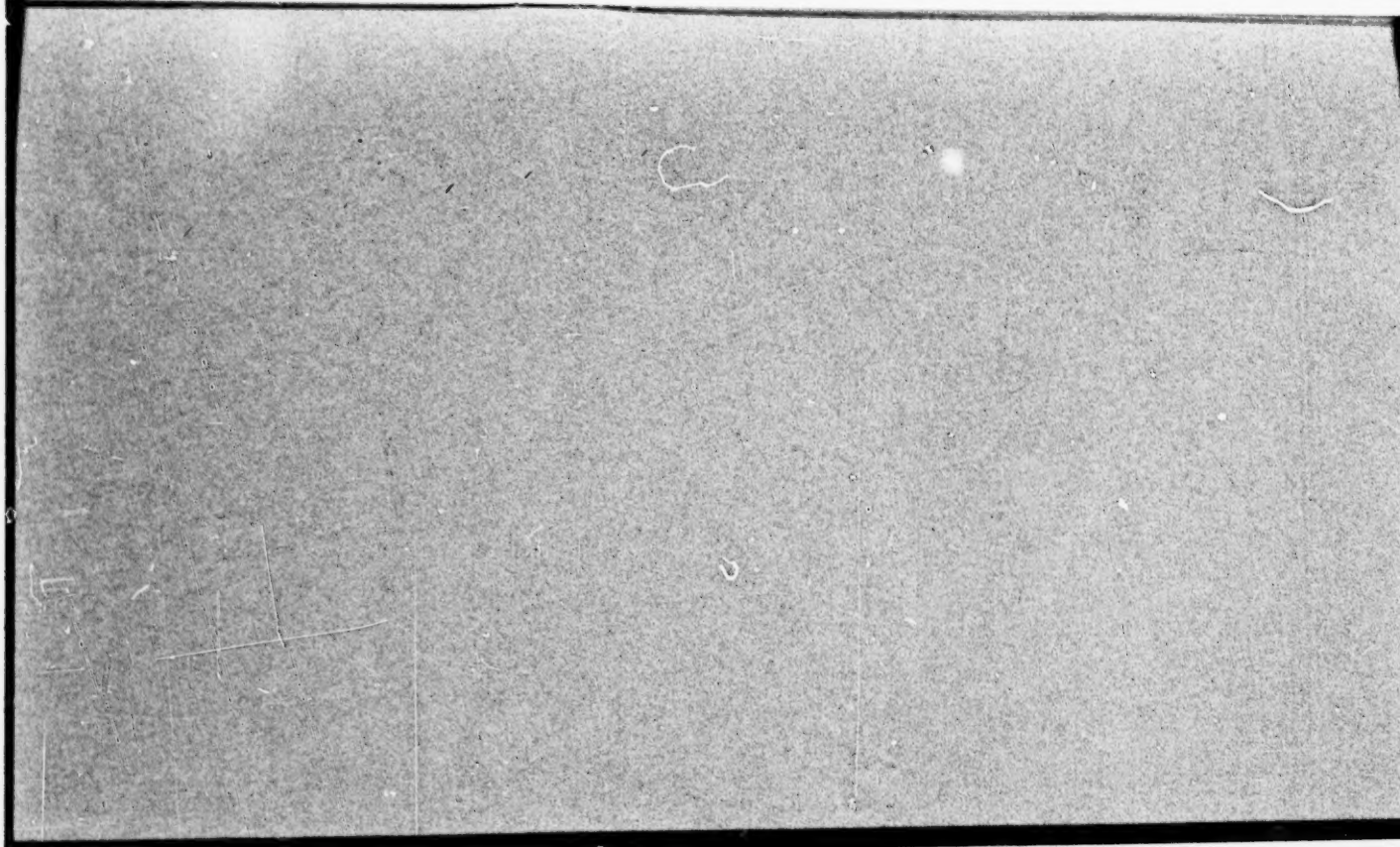

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QUESTIONS PRESENTED

I.

Are the federal questions now raised of such special and important substance to deserve review by this Court?

II.

Do petitioners have a constitutional right to be employed; if so, was such right deprived because of the enactment of *Va. Code Ann.* § 65.1-53?

III.

Did the petitioners have a constitutional right to have a full evidentiary hearing as to the validity of the waivers prior to their execution?

IV.

Is the statute in question unconstitutionally vague?

V.

Was the interpretation of the state statute so arbitrary and unreasonable as to constitute a violation of the Due Process Clause of the Fourteenth Amendcent to the U.S. Constitution?

STATEMENT OF THE CASE

I.

Ralph Lee Mabe v. Clinchfield Coal Co.

In 1969, petitioner Ralph Lee Mabe sought employment with Clinchfield Coal Company. (A. 39).[1] As part of the physical examination routinely administered to prospective employees, an x-ray was taken of Mabe's chest and inter-

[1] References are made to the Appendix filed with the Petitions herein. Although counsel for the petitioners has designated an Appendix as a "Joint Appendix," counsel for the petitioners did not consult with counsel for the respondents regarding the make-up of that Appendix. Parts of this Appendix, including those documents which were introduced into evidence in other cases not included within these Petitions, have been improperly joined in that Appendix.

preted by Dr. W. C. Elliott as showing "fibro-nodose infiltration of the lungs" indicating that Mabe was affected by or susceptible to silicosis and/or coal workers' pneumoconiosis. (A. 16). In accordance with Dr. Elliott's findings, Clinchfield secured a written waiver from Mabe. The terms of this waiver, which was signed by Mabe and witnessed by an employee of Clinchfield Coal Company, provided that Mabe was waiving "the right to claim compensation benefits covering the following physical conditions: fibro-nodose infiltration of the lungs consistent with silicosis and/or coal workers' pneumoconiosis." (A. 16). This waiver was executed pursuant to the express terms of *Va. Code Ann.* § 65.1-53 [formerly § 65.50] and was approved by the Industrial Commission on December 7, 1971.

On June 26, 1973, Mabe filed an Application for Hearing with the Industrial Commission of Virginia alleging that he was suffering the occupational disease of coal workers' pneumoconiosis to which he was last injuriously exposed while employed by Clinchfield. The claim proceeded to hearing before Commissioner M. E. Evans of the Industrial Commission in Lebanon, Virginia on December 12, 1973 and was defended by Clinchfield on the ground that Mabe's claim was barred by the execution of the waiver in 1969. By opinion dated January 8, 1974, Commissioner Evans held that the waiver did bar Mabe's claim. (A. 20-21). Mabe applied for a review of Commissioner Evans' award and by opinion dated March 19, 1974, the full Commission adopted the findings of facts and conclusions of law contained in Commissioner Evans' decision of January, 1974 and affirmed that award. (A. 30-31). Mabe then petitioned the Supreme Court of Virginia for an appeal from the award of the Industrial Commission. By order entered June 25, 1974, that Court held that there was no reversible error in the award appealed from and rejected the Petition, thereby